

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO: 2:20-cr-00054

NEDELTCHO VLADIMIROV

MOTION BY THE UNITED STATES TO TOLL
THE SPEEDY TRIAL ACT AND CONTINUE TRIAL

Comes now the United States of America, by Andrew J. Tessman, Assistant United States Attorney for the Southern District of West Virginia, and respectfully requests that this Court toll the Speedy Trial Act and continue trial in this case based on the public health threat caused by the COVID-19 virus and the General Orders entered in the Southern District of West Virginia.¹

Defendant was arrested on a criminal complaint on February 10, 2010 and indicted on March 10, 2020. Trial was scheduled for May 11, 2020. On March 13, 2020, the Court continued all grand juries and jury trials in this District from Thursday, March 13, 2020 to March 27, 2020, per General Order in Case No. 2:20-mc-00052. On April 13, 2020, after the defendant filed a motion to

¹ The undersigned attorney attempted to confer with counsel for the defendant, Rachel Zimarowski, concerning the proposed extension but was unable to make contact.

continue the trial (ECF 35), the Court continued trial to July 13, 2020 (ECF 36).

On April 14, 2020, General Order #5 further continued all grand juries, jury trials, and in-person hearings until May 31, 2020. On May 22, 2020, General Order #6 further continued all grand juries, jury trials, and in-person hearings until June 30, 2020. On June 22, 2020, the Court continued the trial to July 27, 2020, due to concerns about the COVID-19 pandemic and the General Orders filed in Case No. 2:20-mc-00052. ECF 41. General Orders #7 and #8 reopened the courthouse on a restricted basis with certain precautionary health restrictions in place. On July 21, 2020, after the defendant filed a motion to continue the trial (ECF 44), the Court continued trial to October 19, 2020 (ECF 45).

The United States now moves the Court to continue the trial for at least 30-60 days from October 19, 2020. If the Court continues the trial, the United States further moves for an order specifically tolling the time period from October 19, 2020 through the new trial date based on excludable delay under the Speedy Trial Act.

The requested continuance is excludable delay under the provisions of the Speedy Trial Act. 18 U.S.C. § 3161(h). Section 3161(h) governs the periods of time which shall be excluded from the time period within which a defendant must be brought to trial under the Speedy Trial Act. Specifically, § 3161(h)(7)(A) excludes

"delay resulting from a continuance granted by any judge on his own motion . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." In making this ends-of-justice finding, the court is to consider, inter alia, whether the failure to continue the proceeding would "be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice." *Id.* § 3161(h)(7)(B).

The ends of justice outweigh the interests of the public and the defendant in a speedy trial due to the measures the Court has reasonably taken to address the substantial public health threat posed to the public by the COVID-19 virus. A further continuance of the October 19, 2020 trial is necessary based on continued health concerns and the difficulties and complications of preparing for trial.

It is difficult to subpoena and meet with witnesses, including law enforcement officers. Given the circumstances of the COVID-19 pandemic in Kanawha County, West Virginia, trial preparation for the October 19, 2020, trial in this case will pose an exceptional health risk to law enforcement agents² assigned to the case because

² Additionally, the case agents are employed with the U.S. Secret Service, and these case agents are presently on a security detail related to the November 2020 U.S. Presidential campaigns. These are essential witnesses and their unavailability places a

they will need to travel throughout Kanawha County and elsewhere to track down witnesses and serve trial subpoenas. Due to the nature of the case, certain types of witnesses (i.e. the "boosters" alleged to have conspired with Vladimirov to steal items from retail stores) do not have reliable contact information. These witnesses will be more difficult to track down to serve with subpoenas, and officers will likely be required to meet and interact with several individuals other than the witnesses in public in order to locate the witness. Trial preparation further poses a serious health risk to counsel and witnesses because it is not possible to meet with every witness in this case telephonically or by video. At least two witnesses will need to travel from out of state for trial preparation and the jury trial.

The October 19, 2020, jury trial will pose a serious health risk to the litigants, witnesses, court personnel, and the jury pool. U.S. District Judge Joseph R. Goodwin recently entered an Order continuing a criminal jury trial set for September 29, 2020, to March 2, 2021. See Case No. 2:19-cr-00058 (Dkt. No. 82). In that Order, Judge Goodwin expressed "reservations about gathering the number of people necessary to properly hold a criminal trial into one room" due to the COVID-19 pandemic. In support of the continuance, Judge Goodwin specifically pointed out that: (1) West

significant strain on the United States' ability to prepare for the October 19 trial.

Virginia has not yet achieved the threshold percent positive rate recommended by public health officials before resuming suspended activities; (2) West Virginia's highest in the nation transmission rate; and (3) Kanawha County, West Virginia, is currently designated 'red' by the West Virginia Department of Education, which means it has a seven-day average of more than twenty-five positive cases per 100,000 residents.

Accordingly, the United States respectfully requests that based on the above-stated health concerns, the Court toll the time from October 19, 2020, through the new trial date from the calculation of the time period for when this case must go to trial. The United States further respectfully requests that the Court continue the trial in this matter and all related deadlines and hearings for at least 30 days from its current trial date of October 19, 2020.

DATED: September 17, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document has been electronically filed and service has been made on opposing counsel by virtue of electronic filing on September 17th, 2020 to:

Rachel Zimarowski
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Charleston, West Virginia 25307

By: s/Andrew J. Tessman